

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

VICENTE C.,

Claimant,

Vs.

**SAN GABRIEL/POMONA REGIONAL
CENTER,**

Service Agency.

OAH No. L 2006080903

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on November 30, 2006, in Pomona, California.

Claimant did not appear at the hearing but was represented by his father, Vince C.

Daniela Martinez, Fair Hearing Program Manager, represented the San Gabriel/Pomona Regional Center (Regional Center).

Evidence was received and the matter was submitted for decision. The Administrative Law Judge makes the following findings, legal conclusions and order.

ISSUE

Should the Regional Center provide funding for claimant to participate in a martial arts program?

FACTUAL FINDINGS

1. Claimant is a six year-old boy who qualifies for regional center services based on a diagnosis of autism.

2. Claimant is developmentally delayed with deficits in expressive and receptive speech, and social interactions skills. Claimant also exhibits repetitive and stereotyped behavior patterns.

3. Pursuant to claimant's Individual Program Plan (IPP) addendum dated August 1, 2006, the Regional Center authorized funding for a one-week summer day camp to address socialization deficits. The IPP addendum also states that claimant "is working to improve his motor skills."

4. Claimant requested that the Regional Center provide funding for claimant to participate in a martial arts program that is specifically designed for children with developmental disabilities. The program, known as Adapted Therapeutic Martial Arts, is designed to improve socializations skills, motor skills, as well as other skills such as following directions and focusing on tasks. The program also expects parents of younger children to participate in the classes so that the parents can learn the techniques used by the instructor to apply them at home. The program is vendored as a recreational service, at a cost of \$105 a month for two classes a week.

5. On August 16, 2006, the Regional Center issued a Notice of Proposed Action denying claimant's request for funding for the martial arts program. The Regional Center determined that this service should be the parents' responsibility "because similar services are available for children without disabilities." The Regional Center further relies on its Purchase of Service Policy, and on California Code of Regulations, title 17, section 54326, which requires Regional Centers to consider the family's responsibility when purchasing services for minor children. Claimant's parents requested a fair hearing.

6. Claimant's father testified that claimant shown immediate benefits since he started the program six weeks ago. Claimant has shown improvements in motor skills, following directions, his interaction with others, and has improved his ability to focus on task assignments. According to claimant's father, the program addresses many of the concerns articulated by claimant's parents.

DISCUSSION

1. Welfare and Institutions Code section 4512, subdivision (b), of the Lanterman Developmental Disabilities Services Act states in part:

Services and supports for persons with developmental disabilities' means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or re-habilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives . . . Services and supports listed in the individual

program plan may include, but are not limited to, . . .
recreation, camping, community integration services, . . .
(emphasis added)

2. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question. Within the bounds of the law each client's particular needs must be met, taking into account the needs and preferences of the individual and the family. This requires an active participation by the client and his parents. It should be noted that a priority is assigned to maximizing the client's participation in the community. (See Welf. & Inst. Code, §§ 4500.5, 4501, 4502, 4640, 4646, subds. (a) and (b), and 4648, subd. (a) (1) and (a) (2).)

3. Any service policies established by a regional center to govern the provision of services do not take precedence over the established individual needs of the consumer, which are ultimately paramount. (See *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.) The decision in *Association of Retarded Citizens, supra*, stands for the proposition that the Department of Developmental Services cannot enact regulations that would override the obligation to meet a consumer's needs on an individualized basis. It follows that if the Department could not enact such regulations, then the individual regional centers may not enact general policies that bar them from meeting the established individual needs of a given consumer.

4. Services provided must be cost-effective (§ 4512, subd. (b), *supra*), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Code §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

5. Welfare and Institutions Code section 4685, subdivision (b), provides in pertinent part:

It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following: . . . Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

6. This regional center's policies and plans are rationally based and well grounded; however, the above referenced Legislative mandate overrides any regional center's policies or plans. It is not improper for a regional center to fund a program not strictly within its policy. The requested service meets the needs of claimant and his family at a relatively low cost. The policy should be adapted to meet the particular needs of the client; in this case, by paying for weekly martial arts classes.

LEGAL CONCLUSION

Cause exists to overrule the decision of the San Gabriel/Pomona Regional Center denying funding for claimant to receive weekly martial arts classes at Adaptive Therapeutic Martial Arts. This decision is based on the facts set forth in findings 1 through 6, the application of Welfare and Institutions Code sections 4501, 4502, 4512, 4646, 4648 and 4685, subdivision (b), to the facts of this case, and the Discussion section of this Decision.

ORDER

1. The decision of the San Gabriel/Pomona Regional Center denying funding for claimant to receive martial arts classes is overruled. The appeal by Claimant Vicente C. is granted.

2. The San Gabriel/Pomona Regional Center shall provide funding for claimant to receive two martial arts classes per week to be provided by the Adaptive Therapeutic Martial Arts Program.

DATED: December 6, 2006

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.